IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6558 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ANIL SYNTHETICS LTD.

Versus

BABUBHAI BECHARBHAI

Appearance:

1. Special Civil Application No. 6558 of 2002

MR JITENDRA M PATEL for Petitioner No. 1

MR LN MEDIPALLY for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 09/03/2004

ORAL JUDGEMENT

1. The petitioner in this petition under Article 227 of the Constitution of India has challenged

the judgment and award passed by the Labour Court, Ahmedabad dated 10th August, 2001 in T. Application No. 81 of 1989, which was filed by the respondent under Section 78 read with 79 of the Bombay Industrial Relations Act, has been partly granted and the order of dismissal from the service is declared to be illegal and unreasonable. However, in view of the fact that the company in which he worked as Badli Piecer was destroyed due to fire, no order with regard to reinstatement on the original post was passed but the petitioner has been directed to pay all the benefits to the respondent for the period between 31st December, 1988 and 17th November, 1997 on the basis of the benefits that were made available to the Badli Piecer, who stood next to the respondent in seriatim order and further that the petitioner was directed to make available all the benefits which have been decided under the agreement to the respondent together with Rs.500/- by way of costs. The said order has been confirmed by the Industrial Tribunal - in appeal vide judgment dated 4th April, 2002.

2. According to respondent, he was working in the petitioner mill company as Piecer on Badli basis and being the senior most in that category, he was likely to be made permanent on that post. However, despite his request to confirm him on the vacant post, he was not even permanently appointed and his service was not regularized. His case is that because he joined Maha Gujarat Mill Mazdoor Union, the employer i.e. the petitioner entertained grudge against him. The respondent's say is that without any rime or reason, on 11th October, 1988, a show cause notice was issued to him to which he replied on 13th January, 1988. However, no inquiry was made by the petitioner i.e. the employer and whatever documents that were requested for by him, were not given to him. No opportunity to defend his interest was also given to him. He had also raised preliminary issue with regard to his dismissal to the effect that without there being any show cause notice, it was bad in law. He, therefore, prayed that the order of dismissal from the service which was passed on 29th December, 1988 be quashed and he be directed to be reinstated on his original post with full back wages.

2.1. The said application was contested by the present petitioner by filing reply at Exh. 4 wherein various contentions have been raised which have been adequately reproduced by the Labour Court in the judgment. Both the parties have produced evidence oral as well as documentary. Ultimately on conclusion of the hearing the Labour Court passed the aforesaid directions

in lieu of the reinstatement.

2.2. Both the parties i.e. respondent as well as petitioner preferred separate appeals challenging the judgment and the award of Labour Court. Respondent's appeal was numbered as Appeal (IC) No. 89 of 2001; whereas the petitioner's appeal was numbered as Appeal (IC) No. 90 of 2001. The Industrial Court, Ahmedabad vide its judgment dated 4th April, 2002 dismissed both the appeals and confirmed the judgment of the Labour Court in T. Application No. 81 of 1989.

3. In this petition both these judgments are now under challenge. It may be noted here that so far the respondent is concerned, he has not preferred any petition against the said judgment of the appellate forum. Mr. J.M. Patel, learned advocate appearing for the petitioner has submitted that the award of the Labour Court is erroneous and de-hors the facts of the case, because the respondent was merely a Badli Piecer who was being given offered work as and when it was available. He never worked continuously on all the working days but the Labour Court has proceeded on such footing and has passed the aforesaid directions in lieu of the reinstatement. In other words, according to him, contrary to the facts, the Labour Court has given directions which are on the basis as if the respondent was a permanent employee of the petitioner. Secondly he has further submitted that apart from the trial Court's findings the appellate Court which has concurred with the findings of the trial Court, has not applied its mind while deciding the appeal and has not at all reappreciated the material before it to come to his own conclusion. In short his submission is that except for saying that whatever the trial Court has done is proper, the appellate Court has done nothing and, therefore, the appeal is required to be sent back with a direction to him to decide the appeal on its merits and assign adequate reasons for the decision taken on the appeal.

3.1. As against that, Mr. Medipally, learned advocate appearing for the respondent has submitted that the trial Court has exhaustively dealt with the entire material produced before it and when the appellate forum i.e. the Industrial Tribunal after going through the same, has agreed with the findings given by the trial Court, the said order or judgment cannot be termed as "without application of mind". He has further submitted that when there are concurrent findings, scope of this Court under Article 227 of the Constitution of India becomes very limited. This Court is not here to

reappreciate the evidence or interfere with the findings on facts of the Courts below unless they are so perverse that no reasonable person would come to such a conclusion. So far Mr. Patel is concerned, he has prayed that his appeal be allowed and matter be remanded to the first appellate Court to reconsider the appeal on its merits and to give detailed reasons for his judgment. Mr. Medipally resists this on the ground that when the appellate Court agrees with the Labour Court, there is no need for it to give separate reasons.

4. Having gone through the record of this petition and having considered the submissions made by both the counsels, it is an admitted position that the reinstatement of respondent on his original post together with back wages is not possible as the mill company itself has been destroyed. It is, therefore, to be seen whether the benefits that have been made available to him by the trial Court are proper. The appellate Court i.e. Industrial Tribunal was required to reappreciate the material that was placed before it and to find out whether the conclusion drawn by the trial Court was proper. The judgment of the appellate forum nowhere gives any indication that after reappreciating the entire material what conclusions it has drawn and for what reasons finds the findings given by Labour Court as proper. In fact it clearly appears that the appellate forum i.e. Industrial Tribunal has done nothing but except reproducing what the trial Court had done, said and what findings it had arrived at. The Tribunal has not spoken anything about what it had done, what findings it had arrived at on the basis of the evidence produced before it and on what grounds.

4.1. It may be noted here that this is an admitted fact since Mr. Medipally also agrees that such course has not been adopted by the Tribunal. If that be so, the appellate Court's judgment can be said to be without application of mind or atleast it appears to be so. The persons aggrieved by such judgment and order can legitimately agitate that the appellate forum has disposed of the appeal without reappreciating the evidence or without giving his reasons for accepting the conclusions of the trial Court. In fact under the appellate powers which have been conferred upon it, the Industrial Tribunal is not only required to reappreciate the entire material placed before it in the form of oral as well as documentary evidence, but it has to reappreciate and come to its independent conclusions and base its findings on the material placed before it and its judgment or the order should also reflect what

factors have been taken into consideration by him and why it has thought it fit to confirm or otherwise the findings given by the trial Court. In the present judgment, except for reproducing what the Labour Court has done, the Tribunal has not even remotely stated on what basis it had come to the conclusion that there was no fault on the part of Labour Court in giving its decision and whatever it had done was proper. Such a course is not permissible. The Apex Court in the decision rendered in the case of State of Rajasthan v/s. Harphool Singh reported in (2000) 5 S.C.C. at page 652 has held that duty of the Court of first appeal is to make the critical analysis of the matter before it. It cannot mechanically affirm findings of trial Court without due and proper application of mind. In the said judgment Supreme Court has observed as under :-

> "A close scrutiny of the judgment of the first appellate court shows that there was no due or proper application of mind or any critical analysis or objective consideration of the matter made, despite the same being the first appellate court. On the other hand, by merely reproducing the findings of the trial Court a mechanical affirmation seems to have been made of them without any reference to the principles of law or the criteria to be satisfied before the claim of the plaintiff of perfection of title by adverse possession could be sustained, involving correspondingly destruction of title of the State in respect of a public property."

4.2. Further this Court also in the case of Dumala Vahpara Gram Panchayat v/s. Chunilal Tribhovandas Patel reported in 1999 (2) G.L.H. page 959 has laid down that appeal is a valuable right of the parties conferred by law. There is a hierarchical arrangement made in the law to finally decide the controversy of the parties litigating so as to avoid ay further litigation. In para.9 of its judgment, it has observed as under :-

> "9. Now as stated before, the approach of the First Appellate Court appears to be very casual and cursory in the present matter. Serious questions and issues are involved in the matter, which are required to be decided with reference to the evidence on record and the law prevailing. Instead taking into consideration only fact of previous litigation between the parties, the lower Appellate Court has decided these all controversies in one paragraph only, which is

quoted hereunder."

4.3. Thus, it is very clear that the appellate Court cannot cursorily decide the appeal and without recording its own findings come to a sole conclusion that whatever the trial Court has done is proper. This is virtually against the aforesaid decisions of the Apex Court as well as this Court. The appellate forum is, therefore, required to be directed to decide the appeal after reappreciating the entire fact and fully discussing the same in the judgment. The judgment and order passed in Appeal (IC) No. 90 of 2001 are required to be quashed and set aside.

4.4. It may be noted here that both the appeals i.e. Appeal (IC) Nos. 89 of 2001 and 90 of 2001 were disposed of by common judgment. The respondent's appeal is also dismissed by the Industrial Tribunal without assigning any reason. In that view of the matter, the respondent's appeal is also dismissed. However, he has not preferred any petition under Article 227 of the Constitution of India. Any how when this Court is directing the appellate Court to reconsider the entire case and to give its definite findings in the judgment, it is in the interest of justice that the cognate matter i.e. the other Appeal No. 89 of 2001 may also be reconsidered by him. As stated above, both these appeals are disposed of by common judgment. Even if there is no petition filed, this Court can certainly exercise its discretion and direct the appellate Court to reconsider both the appeals and decide the same on their merits in accordance with law after recording its own findings. After reappreciating the entire evidence, it may give its own findings and record the same in its judgment.

5. In view of the aforesaid, the judgment of the Industrial Tribunal dated 4th April, 2002 is quashed and set aside and the appellate Court is directed to decide petitioner's Appeal as well as that of the respondent on its merits after reappreciating the entire material before it and by giving its own reasonings and conclusions in the judgment. Mr. J.M. Patel has, ofcourse, vehemently objected to appeal of respondent being reconsidered because according to him, decision has become final as he has not preferred any petition under Article 227 of the Constitution of India. Even that be so, when the entire judgment is quashed and set aside and he is required to reconsider the entire material afresh, there is no harm in exercising my discretion directing him to even redecide the appeal of respondent, on or

before 31st August, 2004, as the judgment rendered in the said appeal impliedly stands quashed by virtue of this order being a common one and suffering from the same infirmity. This petition is, therefore, allowed. Rule made absolute with no order as to costs.

5.1. It is clarified that the directions given in this judgment do not mean that it has to come to the same conclusion as given in the earlier judgment. The Industrial Tribunal is at liberty to reappreciate the entire evidence and come to its own conclusions which may not be the same as taken in the judgment in the aforesaid appeal but it may as well differ from the said conclusions.

[AKSHAY H. MEHTA, J.]

* Pansala.